

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:LM:RFPH:STP:POSTF-129134-02

JForsberg

date: June 20, 2002

to: Chris Heth, Revenue Agent  
Des Moines, Iowa

from: Associate Area Counsel (LMSB)  
St. Paul, Minnesota

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subject: [REDACTED] Company  
Consents to Extend the Statute of Limitations

Our advice has been requested as to the proper form for Forms 872 for the [REDACTED] Company consolidated group's taxable year ended December 31, [REDACTED], and for the [REDACTED] Company consolidated group's taxable year ended December 31, [REDACTED]. For the reasons indicated, we believe that the Form 872 should be prepared and executed in the manner set forth below.

FACTS

[REDACTED] Company (EIN [REDACTED]) (" [REDACTED] ") was an [REDACTED] mutual life insurance company organized under Chapter [REDACTED] of Title [REDACTED] and Chapter [REDACTED] of Title [REDACTED] of the [REDACTED] Code and taxed under Subchapter L of the Internal Revenue Code. [REDACTED] filed a consolidated return as the parent corporation of a consolidated group (the " [REDACTED] ") for the taxable year ended December 31, [REDACTED].

On [REDACTED], the [REDACTED] underwent a reorganization to adopt a mutual holding structure pursuant to the provisions of Chapter [REDACTED] of Title [REDACTED] of the [REDACTED] Code. As part of the reorganization, [REDACTED] was converted from a mutual life insurance company to a stock life insurance company. Upon conversion, [REDACTED]'s members became members in [REDACTED] Company (EIN [REDACTED]) (" [REDACTED] ") and their membership interests in [REDACTED] were extinguished. [REDACTED] was a newly formed [REDACTED] mutual insurance holding company organized under Chapter [REDACTED] of Title [REDACTED] of the [REDACTED] Code. Upon [REDACTED]'s conversion, its stock was issued to [REDACTED].

immediately transferred the stock to [REDACTED] Inc. (EIN [REDACTED]) (" [REDACTED] "), a newly-formed corporation which was a wholly-owned subsidiary of [REDACTED]. [REDACTED] in turn immediately transferred the stock to [REDACTED] Inc. (EIN [REDACTED]) (" [REDACTED] "), a newly-formed corporation which was a wholly-owned subsidiary of [REDACTED]. Thus, [REDACTED] became a third-tier subsidiary of a [REDACTED]. On or about [REDACTED], [REDACTED] amended its article of incorporation to changed its name to " [REDACTED] Company." In PLR9835039 the Service ruled, inter alia, that conversion of [REDACTED] to a stock life insurance company constituted a tax free reorganization under I.R.C. § 368(a)(1)(E) and that the [REDACTED] remained in existence with [REDACTED] as its new parent. (Under Rev. Rul. 82-152, 1982-2 C.B. 205, the reorganization did not cause the termination of the [REDACTED], the [REDACTED]'s taxable year did not close due to the reorganization, and [REDACTED] became the [REDACTED]'s new parent.) For the taxable year ended December 31, [REDACTED], [REDACTED] filed a consolidated return as the parent of the [REDACTED].

On or about [REDACTED], the [REDACTED] underwent a second reorganization to demutualize. As part of the demutualization, [REDACTED] was converted from a mutual insurance holding company to a stock company. Upon conversion, [REDACTED]'s members received stock in [REDACTED] Inc. (EIN [REDACTED]) (" [REDACTED] "), or, in some cases, cash or policy credits, and their membership interests in [REDACTED] were extinguished. [REDACTED] is a Delaware corporation, which, prior to [REDACTED], was a wholly-owned subsidiary of [REDACTED]. Concurrently with the conversion, [REDACTED], along with [REDACTED] and [REDACTED] merged into [REDACTED] Inc. (EIN [REDACTED]) (" [REDACTED] "), with [REDACTED] being the surviving corporation. [REDACTED] is an [REDACTED] corporation which is a wholly-owned subsidiary of [REDACTED]. On or about [REDACTED], [REDACTED] amended its articles of incorporation to change its name to " [REDACTED] Inc."

It is our understanding that [REDACTED] continues in existence and has not been through any subsequent mergers, dissolutions, or name changes (other than the name change to " [REDACTED] Company") and is now a second-tier subsidiary of [REDACTED]. It is also our understanding that [REDACTED] continues in existence and has not been through any subsequent mergers, dissolutions, or name changes (other than the

name change to "[REDACTED] Inc."). Both under the terms of the Agreement and Plan of Merger (section [REDACTED]) and by operation of [REDACTED], [REDACTED] succeeded to all the rights, privileges, liabilities, etc., of [REDACTED].

#### DISCUSSION

Treas. Reg. § 1.1502-77(a) provides generally that the common parent of a consolidated group is the sole agent for each subsidiary in the group for any consolidated return year. Expressly included in the authority of the common parent is the power to execute waivers. Treas. Reg. § 1.1502-77(a) further provides that its provisions shall apply "whether or not a consolidated return is made for any subsequent year, and whether or not one or more subsidiaries have become or have ceased to be members of the group at any time."

Treas. Reg. § 1.1502-77T provides for alternative agents where a corporation that is the common parent of a group ceases to be the common parent. Under Treas. Reg. § 1.1502-77T(a) (3) & (4), a waiver of the statute of limitations given with respect to the group will be deemed to be given by the agent for the group if it is given by any of the following:

- (i) The common parent of the group for all or any part of the year to which the notice or waiver applies,
- (ii) A successor to the former common parent in a transaction to which section 381(a) applies,
- (iii) The agent designated by the group under § 1.1502-77(d), or
- (iv) If the group remains in existence under § 1.1502-75(d) (2) or (3), the common parent of the group at the time the notice is mailed or the waiver given.

Paragraph (a) (2) of section 381 provides that the section applies to the acquisition of assets of a corporation by another corporation in a reorganization to which section 361 applies if, inter alia, the reorganization is described in section 368(a) (1) (A) (respecting statutory mergers and consolidations).

Taxable Year Ended December 31, [REDACTED]

[REDACTED] ceased to be the parent corporation of the [REDACTED] after the first reorganization on [REDACTED]. However, the corporate existence of [REDACTED] continued unabated, albeit in a different form and with a different name. Accordingly, [REDACTED] (now [REDACTED] Company) continues as agent for the [REDACTED]'s taxable year ended December 31, [REDACTED], and can execute waivers for the group for that year.

In preparing the Form 872 for the [REDACTED]'s taxable year ended December 31, [REDACTED], we recommend that:

1. The taxpayer's name read:

[REDACTED] Company (EIN [REDACTED]), formerly [REDACTED] Company, as agent for the [REDACTED] Company and Subsidiaries consolidated group\*

With the following footnote at the bottom of the page:

\* This is with respect to the consolidated tax liability of the [REDACTED] Company and Subsidiaries consolidated group for the taxable year ended December 31, [REDACTED].

2. The EIN of [REDACTED] Company should be used as the taxpayer's EIN ([REDACTED]).

3. The signature block should use name "[REDACTED] Company" and should be executed by a current officer of [REDACTED] Company. See, Rev. Rul. 83-41, 1983-1 C.B. 349, clarified and amplified, Rev. Rul. 84-165, 1984-2 C.B. 305.

Taxable Year Ended December 31, [REDACTED]

In the present case, [REDACTED] (now [REDACTED] Inc.) can execute consents for the [REDACTED]'s taxable year ended December 31, [REDACTED], as agent for the group under Treas. Reg. § 1.1502-77T(a)(4)(ii). [REDACTED] itself was never a member of the group and likely is not liable for the group's tax liability merely by virtue of its agency for the group. However, under both [REDACTED] law and the terms of the merger agreement, [REDACTED] is [REDACTED]'s successor-in-interest and

is liable for [REDACTED]'s debts, including [REDACTED]'s several liability for the [REDACTED]'s consolidated tax liability. To fully protect the Government's interest, [REDACTED] should execute the consent both as agent for the group and as [REDACTED]'s successor-in-interest.

In preparing the Form 872 for the [REDACTED]'s taxable year ended December 31, [REDACTED], we recommend that:

1. The taxpayer's name read:

[REDACTED], Inc. (EIN [REDACTED]) as alternative agent under Temp. Reg. 1.1502-77T(a)(4) for the members of [REDACTED] Company (EIN [REDACTED]) consolidated group, and as successor-in-interest to [REDACTED] Company (EIN [REDACTED]) \*

With the following footnote at the bottom of the page:

\* This is with respect to the [REDACTED] Company (EIN [REDACTED]) consolidated group for the taxable year December 31, [REDACTED].

2. The EIN of [REDACTED] Inc. (i.e., [REDACTED]) (EIN [REDACTED]) should be used as the taxpayer's EIN.

3. The signature block should use name "[REDACTED], Inc." and should be executed by a current officer of [REDACTED]. See, Rev. Rul. 83-41, 1983-1 C.B. 349, clarified and amplified, Rev. Rul. 84-165, 1984-2 C.B. 305.

By a memo dated February 21, 2002, guidance was issued with respect to new procedures to be followed to when soliciting consents to extend the statute of limitations. These procedures are intended to insure compliance with section 3461 of the Restructuring and Reform Act of 1998 (codified in I.R.C. § 6501(c)(4)(B)), which requires that the Service advise taxpayers of their right to refuse to extend the statute of limitations on assessment. If you have not received a copy of the memo, please let us know and we will provide you with a copy.

DISCLOSURE STATEMENT

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

If you have any questions respecting this matter, please call Jack Forsberg at (651) 290-3473, ext. (b)(6)

REID M. HUEY  
Associate Area Counsel (LMSB)

**/s/ Jack Forsberg**

By: \_\_\_\_\_  
JACK FORSBERG  
Special Litigation Assistant

JMF  
6/20/02